

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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| In the Matter of a | * | |
| Judicial Complaint | * | No. 04-19-90109 |
| Under 28 U.S.C. § 351 | * | |

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a district judge pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, which provides an administrative remedy for judicial conduct that is “prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a).

In 2019 the complainant filed a petition under 28 U.S.C. § 2254 for writ of habeas corpus. The judge dismissed the case without prejudice for lack of jurisdiction.

The complainant takes issue with the district court’s reassignment of his case to the judge who dismissed the case, and who is the subject of this judicial complaint.* The complainant contends the reassignment “proves my [suspicion] that [the subject judge] wanted to be on my case and that is improper, misconduct, & personal bias.”

Any person who alleges that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts is to file “a written complaint containing a brief statement of the facts constituting such conduct.” 28 U.S.C.

* The judge who is the subject of this judicial complaint will hereinafter be referred to as the “subject judge.”

§ 351(a). The chief judge may dismiss any judicial complaint that is “not in conformity with section 351(a).” 28 U.S.C. § 352(b)(1)(A)(i).

A cognizable claim of misconduct may be based upon a showing that a judge’s decision was motivated by racial or ethnic bias or other improper motive, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings; *In re Doe*, 2 F. 3d 308 (8th Cir. Jud. Council 1993) (judicial complaint process may not be used to pursue speculative claims).

In determining what action to take on a judicial complaint, the chief judge may conduct a limited inquiry, including obtaining and reviewing transcripts and other relevant documents. *See* Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

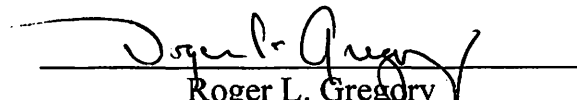
A limited inquiry was made to the district court clerk’s office concerning the reassignment of the case from another district court judge to the subject judge. The following explanation was provided. The subject judge had been assigned to and decided a case involving the complainant in 2016. Because of that 2016 assignment, the subject judge should have been originally assigned to preside over the complainant’s 2019 petition for writ of habeas corpus. However, due to clerical error, the 2016 case was not included in the appropriate district court database. When the error was uncovered by a staff attorney, the case was reassigned to the subject judge.

The complainant has failed to present any facts or evidence of misconduct on the part of the judge. The complainant's 2019 petition for writ of habeas corpus should have originally been assigned to the subject judge. Due to clerical error, the case was assigned to another district judge. When the error was uncovered, the case was reassigned to the subject judge.

Furthermore, the complainant's allegation of improper motive is speculative, unsupported, refuted by the response to the limited inquiry, and does not otherwise raise an inference that misconduct has occurred.

Accordingly, this judicial complaint is dismissed because it does not conform with 28 U.S.C. § 351(a), and because it lacks factual and evidentiary support. 28 U.S.C. § 352 (b)(1)(A)(i) and (iii).

IT IS SO ORDERED.



Roger L. Gregory
Chief Judge